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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1154

BANQUE DE FRANCE,

Petitioner-Appellant

For an Order of Restraint

against

THE SUPREME COURT OF THE STATE OF NEW YORK, HON. FELIX C. BENVENGA, INDIVIDUALLY AND AS ONE OF THE JUSTICES THEREOF, AND DANIEL DE GORTER AND HENRI WILD, AS ASSIGNEES OF BANQUE NATIONALE DE BELGIQUE,

Respondents-Appellees.

STATEMENT OF BASIS ON WHICH APPELLANT CONTENDS THE SUPREME COURT OF THE UNITED STATES HAS JURISDICTION UPON APPEAL TO REVIEW THE JUDGMENT APPEALED FROM, AS REQUIRED BY UNITED STATES SUPREME COURT RULE 12.

Pursuant to United States Supreme Court Rule 12, Paragraph 1, Banque de France, the above named appellant, presents this, its statement showing the basis on which

said appellant contends that the Supreme Court of the United States has appellate jurisdiction to review on appeal the judgment appealed from herein, as follows:

I. The statute believed to sustain appellate jurisdiction is Judicial Code, Section 237, amended (Section 344 of Title 28 of the United States Code Annotated), which provides that a final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court on a writ of error.

II. The statute of the State, the validity of which is involved, is Section 224 of the General Corporation Law of the State of New York (Section 224, L. 1909, ch. 28), which provides:

> "An action against a foreign corporation may be maintained by a resident of the state, or by a domestic corporation, for any cause of action."

III. The judgment sought to be reviewed is dated March 5th, 1942, and appellant's petition for appeal was presented to and allowed by Hon. Irving Lehman, the Chief Judge of the Court of Appeals of the State of New York, on the 7th day of March, 1942.

IV. Banque de France claims that under Article 1, Section 8, Clause 3 of the Constitution of the United States, it is immune from suit in the courts of the State of New York, because it is a foreign corporation incorporated under the laws of France, which does not maintain any office or place of business, or transact any business in the

State of New York, and that the courts of the State of New York are without jurisdiction of an action upon a contract which was made and to be performed in France, and which is wholly unrelated to the State of New York.

Banque de France further claims that insofar as Section 224 of the General Corporation Law of the State of New York purports to give to the courts of the State of New York the power to entertain or exercise jurisdiction of such action, it is unconstitutional and void.

The validity of Section 224 of the General Corporation Law of the State of New York has been upheld in this proceeding by the Court of Appeals of the State of New York, said court being the highest court of the State of New York (Opinion, Lehman, Ch. J. annexed).

V. The questions presented upon this appeal are as follows:

(1) Do the provisions of Article 1, Section 8, Clause 3 of the United States Constitution render unconstitutional and void the provisions of Section 224 of the General Corporation Law of the State of New York, as applied to an action which arose outside the State of New York, upon a contract made and to be performed in France, which is wholly unrelated to the State of New York, between two corporations engaged in interstate and foreign commerce which do not maintain any office or place of business, or transact any business in the State of New York?

(2) Are the principles of immunity under the Commerce Clause of the United States Constitution (Article 1, Section 8, Clause 3), as applied in *Davis* v. *Farmers' Cooperative Equity Co.*, 262 U. S. 312; *Denver & Rio Grande Western R. Co.* v. *Terte*, 284 U. S. 284; *International Milling Co.* v. *Columbia Transportation Co.*, 292 U. S. 511; *Atchison, T. & S. F. Ry. Co.* v. *Wells*, 265 U. S. 101; *Michigan Central R. R. Co.* v. *Mix*, 278 U. S. 492; *Ball* v. *Canadian Pacific Steamships, Ltd.*, 276 N.

Y. 650, and *Matter of Baltimore Mail S. S. Co.* v. *Fawcett*, 269 N. Y. 379, (certiorari denied 298 U. S. 675) applicable only in favor of corporate common carriers, or do they extend equally to all other foreign corporations engaged in interstate or foreign commerce?

(3) Are the principles of immunity under the Commerce Clause of the United States Constitution (Article 1, Section 8, Clause 3), as applied in *Davis* v. *Farmers' Cooperative Equity Co.*, 262 U. S. 312; *Denver & Rio Grande Western R. Co.* v. *Terte*, 284 U. S. 284; *International Milling Co.* v. *Columbia Transportation Co.*, 292 U. S. 511; *Atchison, T. & S. F. Ry. Co.* v. *Wells*, 265 U. S. 101; *Michigan Central R. R. Co.* v. *Mix*, 278 U. S. 492; *Ball* v. *Canadian Pacific Steamships, Ltd.*, 276 N. Y. 650, and *Matter of Baltimore Mail S. S. Co.* v. *Fawcett*, 269 N. Y. 379 (certiorari denied 298 U. S. 675) applicable only in favor of a foreign corporation defendant engaged in interstate and foreign commerce, otherwise entitled to such immunity, in a situation wherein there is another forum, apart from the local forum, available equally to both parties to the litigation?

VI. The facts upon which this case is founded, and the grounds upon which it is contended by appellant that the questions involved herein are substantial, are as follows:

Banque de France is a foreign banking corporation, and is the central bank of issue of France. It is also a commercial bank engaged in interstate and foreign commerce throughout the world. Between November 1939 and May 1940, Banque Nationale de Belgique, the central bank of issue of Belgium, delivered to Banque de France, at Paris, France, for safekeeping, certain cases said to contain gold of the value of in excess of two hundred and twenty-eight million dollars. In February 1940 a written contract, stating the obligations of the parties regarding the safekeep-

ing of the said cases said to contain gold, having been prepared in France, was forwarded to Brussels, Belgium, for signature, where it was signed. Said contract was then delivered to Banque de France, at Paris, France. Said cases, alleged to contain gold, were in the custody or control of Banque de France at the time of the German invasion, and for reasons which it is not here important to discuss, have not been redelivered to Banque Nationale de Belgique.

On March 14th, 1941, a single exiled director of Banque Nationale de Belgique, acting at London, England, purported to assign to Messrs. Daniel de Gorter and Henri Wild, residents of the State of New York, the claim of Banque Nationale de Belgique against Banque de France, arising out of the alleged breach of contract and conversion of said gold in France. On April 23rd, 1941, said alleged assignees instituted an action in the Supreme Court of the State of New York to recover $228,294,283.54 by levy of an attachment upon gold, the property of Banque de France, deposited in the Federal Reserve Bank of New York, valued at seven hundred and forty-nine million dollars. Service of the summons in said action upon Banque de France was effected by publication.

Banque de France, appearing specially, moved to dismiss the complaint in said action on the ground, among others, that to subject Banque de France to the necessity of defending the action in the courts of the State of New York would impose upon the defendant, a foreign corporation engaged in interstate and foreign commerce, an undue and unreasonable burden, in violation of the Constitution of the United States, and particularly of Article 1, Section 8, Clause 3 thereof. The Supreme Court of the State of New York denied said motion on August 8th, 1941,

with an opinion by Mr. Justice Benvenga, in which he held that the immunity from suit of non-resident corporations engaged in interstate or foreign commerce does not apply to foreign banking corporations "at least not to foreign banking corporations which, like those here involved, are not commercial banks, but central banks of issue", and that even assuming that Banque de France is engaged in foreign commerce, the prosecution of the action in the courts of the State of New York would not impose upon it a burden so heavy and so unnecessary as to be oppressive and unreasonable within the meaning of the Constitutional provision.

Appellant appealed from the decision of Mr. Justice Benvenga to the Appellate Division of the Supreme Court of the State of New York, in and for the First Judicial Department, and the latter Court affirmed the order of the lower Court denying appellant's motion to dismiss the complaint. Appellant then applied to the said Appellate Division of the Supreme Court of the State of New York for permission to appeal to the Court of Appeals of the State of New York, which application was denied.

Banque de France has not answered, or appeared generally, in said action.

On November 3rd, 1941, appellant, following the procedure approved by this Court in *Denver & Rio Grande Western R. Co.* v. *Terte*, 284 U. S. 284, instituted this Special Proceeding in the Appellate Division of the Supreme Court of the State of New York, in and for the First Judicial Department, for an Order of Restraint, pursuant to the provisions of Article 78 of the Civil Practice Act of the State of New York, and Sections 1295 and 1300 thereof, directing the Supreme Court of the State of New York and Hon. Felix C. Benvenga, individually and as one of the Justices of said Court, and Daniel de Gorter and Henri Wild, as

Assignees of Banque Nationale de Belgique, to desist and refrain from taking any further proceedings in the action hereinabove mentioned, and restraining the Supreme Court of the State of New York and Hon. Felix C. Benvenga, individually and as one of the Justices thereof, from entertaining or exercising jurisdiction in said action, upon the ground that the exercise of jurisdiction therein was without, or in excess of, the jurisdiction of said Supreme Court of the State of New York and said Hon. Felix C. Benvenga, as one of the Justices thereof, because of the provisions of Article 1, Section 8, Clause 3 of the Constitution of the United States.

On November 10th, 1941, the Appellate Division of the Supreme Court of the State of New York, in and for the First Judicial Department, sustained a demurrer to the said petition and dismissed the petition "as matter of law and not in the exercise of discretion." Upon appeal to the Court of Appeals of the State of New York, the said Court being the highest Court in the State of New York, on March 5th, 1942, affirmed the decision of the Appellate Division of the Supreme Court of the State of New York, in and for the First Judicial Department, with an opinion by Hon. Irving Lehman, Chief Judge of said Court, wherein the said Court of Appeals of the State of New York unanimously held valid and constitutional the provisions of Section 224 of the General Corporation Law of the State of New York (Laws 1909, ch. 28, Section 224).

It is the aforesaid judgment of the Court of Appeals of the State of New York from which appellant seeks to appeal to the Supreme Court of the United States, and which the appellant contends that the Supreme Court of the United States has jurisdiction to review.

VII. The cases upon which appellant relies to sustain the jurisdiction of the Supreme Court of the United States

to review the said judgment of the Court of Appeals of the State of New York are the following: *Dahnke-Walker Co.* v. *Bondurant*, 257 U. S. 282; *Jett Bros. Co.* v. *City of Carrollton*, 252 U. S. 1.

The precise questions here presented have never been passed upon by the Supreme Court of the United States, as they are questions of first impression. Concededly, immunity from suit under the so-called "Commerce Clause" of the Constitution has heretofore been applied in litigations involving only corporate common carrier defendants. It is the contention of appellant, however, that such immunity applies equally to all engaged in interstate or foreign commerce, and that such immunity from suit in a jurisdiction foreign to the place of business of the corporate defendant and to the place where the cause of action arose in favor of a non-resident plaintiff, upon a contract made and to be performed in a foreign jurisdiction, is not confined to defendants who are engaged in transportation as common carriers. Appellant also contends that the nature of the function in interstate and foreign commerce performed by the corporate defendant is not the decisive factor in determining the existence of such immunity, but that such decisive factor is to be found in the fact that the corporate defendant is engaged exclusively in interstate or foreign commerce, and that, therefore, the defense of a suit against it in a foreign forum necessarily places an undue burden upon commerce.

From the opinion of the Court of Appeals in this case, it is not entirely clear that the refusal to apply the immunity in the case at bar is grounded upon the fact that the defendant, a foreign banking corporation, is not a common carrier engaged in the business of transportation of persons or things in interstate or foreign commerce.

In this regard the opinion of Chief Judge Lehman says:

> "At least in theory, state laws which unreasonably obstruct and unduly burden interstate commerce in any form may violate the commerce clause of the Constitution. (*Davis* v. *Farmers Cooperative Equity Co.*, 262 U. S. 312, 316). The principle upon which the petitioner relies is general; yet when that principle is invoked to support the contention that in a particular case a law of the State of New York is obnoxious to the commerce clause of the Constitution, then the nature of the function which the foreign corporation performs in foreign or interstate commerce may be the decisive factor in applying the test whether the assertion of jurisdiction casts 'a serious and unreasonable burden' upon the corporation, a burden which unduly obstructs interstate commerce."

The really determining factor against the granting of immunity in the case at bar, which seems to have been adopted in the decision of the Court of Appeals of the State of New York, is that in the litigation at bar the facts fail to prove that "the suit might more conveniently be litigated in another forum available equally to both parties."

Appellant respectfully submits that this is not the true test as laid down by the decisions of the Supreme Court of the United States in the cases hereinabove set forth, and that if the principle thus stated to be controlling by the Court of Appeals of the State of New York is to be accepted as such, it should be so established by an authoritative decision of the Supreme Court of the United States.

VIII. There is appended hereto a copy of the opinion delivered by Mr. Justice Benvenga, one of the Justices of the Supreme Court of the State of New York, to which this Special Proceeding is ancillary, entitled "Daniel de Gorter and Henri Wild, as Assignees of Banque Nationale

de Belgique, plaintiffs, against Banque de France, defendant", affirmed 262 A. D. 997.

There is also appended hereto a copy of the opinion herein delivered by Hon. Irving Lehman, Chief Judge of the Court of Appeals of the State of New York, dated March 5th 1942.

Respectfully submitted,

FREDERIC R. COUDERT,
Attorney for Appellant.

COUDERT BROTHERS,
Of Counsel.

Leave to file the foregoing statement as to jurisdiction is hereby granted this 24th day of March, 1942.

IRVING LEHMAN,
Chief Judge, Court of Appeals.

APPENDIX "A".

SUPREME COURT, NEW YORK COUNTY, SPECIAL TERM, PART I.

DANIEL DE GORTER and HENRI WILD, Assignees of Banque National de Belgique, *Plaintiffs*,

against

BANQUE DE FRANCE, Defendant.

Filed Aug. 9, 1941, New York County Clerk's Office.

BENVENGA, *J.*:

Motion for judgment dismissing the complaint herein, on the ground that the courts of this state are without jurisdiction of the person of the defendant and of the subject-matter of the action.

The action is for breach of contract and conversion, brought by residents of New York, assignees of the Banque Nationale de Belgique, a foreign banking corporation, against the Banque de France, also a foreign banking corporation.

It is alleged that between November, 1939 and May, 1940, immediately after the outbreak of the European War, the Banque de Belgique delivered gold of the value of more than $228,000,000 to the Banque de France for safekeeping, on the understanding that the Banque de France would, on demand, return the gold to the Banque de Belgique; that in June, 1940, just before the armistice between France and Germany, the Banque de Belgique demanded the return of the gold and it was refused.

It is not disputed that, as a rule, the general jurisdiction of the courts of this state extends to transitory causes of action of the nature here involved (Gregonis *v.* Coal & Iron Co., 235 N. Y. 152, 158-159; McCauley *v.* Georgia Bank, 239 N. Y. 514; Matter of Baltimore Mail S. S. Co. *v.* Fawcett, 269 N. Y. 379, 385), it is contended, however, that this court lacks jurisdiction of the subject matter, because in

the contract sued upon, the parties have expressly agreed to the exclusive jurisdiction of the courts of France.

Whatever the effect of such a stipulation may be in other jurisdictions, it is wholly ineffectual here. An agreement by which parties to a contract undertake to oust the courts or tribunals of this state of jurisdiction over controversies between the parties thereafter arising out of the contract and to confer exclusive jurisdiction to determine such controversies upon a foreign tribunal, is against public policy, null and void. (Sudbury *v.* Ambi, 213 App. Div. 98, 102-103; Sliosberg *v.* Ins. Co., 217 App. Div. 685, 688-689; Parker *v.* Krauss Co., 157 Misc. 667, 669; Aff'd. 249 App. Div. 718).

It is also contended that this court lacks jurisdiction of the person of the defendant, because the exercise of jurisdiction would conflict with the commerce clause of the Federal Constitution (U. S. Const., Art. 1, Sec. 8, Cl. 3), in that it would cast an undue and unreasonable burden upon interstate and foreign commerce.

Under this clause, nonresident corporations engaged in interstate or foreign commerce have been held not subject to suit, unless the cause of action grew out of business transacted within the territory of the forum (Guerin Mills *v.* Barrett, 254 N. Y. 380, 385; Brood *v.* Aluminum Co., 231 App. Div. 693, 698). But this rule, concededly, has been applied only to common carriers directly engaged in the transportation of persons or things in interstate commerce; it has never been applied to interstate or foreign corporations engaged in the banking business. Nor can the rule be so applied; at least, not to foreign banking corporations which, like those here involved, are not commercial banks, but central banks of issue, it seems that such banks customarily carry with other central banks, particularly at important financial centers, substantial amounts of gold and credit balances in order to discharge debts and credits arising out of relations between themselves. Their activities are highly specialized and limited. They are not engaged in foreign commerce within the meaning of the constitutional provision. At all events, such relationship as their activities may have to foreign commerce is but indirect and incidental. Accordingly, even assuming that the Banque de France is

engaged in foreign commerce, the prosecution of the action in the courts of this state would not impose upon it "a burden so heavy and so unnecessary as to be oppressive and unreasonable" within the meaning of the constitutional provision. "Such a suit may be a burden, but oppressive and unreasonable it is not" (International Milling Co. *v.* Columbia Transportation Co., 292 U. S. 511, 519, 520).

The motion is denied.

Dated, August 8th, 1941.

F. C. B. *J. S. C.*

APPENDIX "B".

In the Matter of the Application of BANQUE DE FRANCE, *Appellant,*

against

THE SUPREME COURT OF THE STATE OF NEW YORK, et al., *Respondents.*

(Decided March 5, 1942.)

Appeal by petitioner from the unanimous order of the Appellate Division, first department, dismissing as a matter of law a petition to restrain a judge from hearing the cause. Constitutional question involved.

Mahlon B. Doing and Frederic R. Coudert for appellant.

John Foster Dulles, Robert E. Houston, Jr. and MacDonald Deming for Daniel de Gorter et al., respondents.

LEHMAN, *Ch. J.:*

Banque de France is a corporation organized and existing under the laws of France. In France it conducts its business as the central bank of issue of France and as a commercial bank. Such business as it transacts here is purely incidental to its business in France, but in the course of that business it customarily maintains large bank balances here. Daniel de Gorter and Henri Wild are residents of the State of New York. Claiming that Banque

National de Belgique, a corporation organized and existing under the laws of Belgium, has a good cause of action against Banque de France for breach of contract and that Banque National de Belgique has assigned its cause of action to them, they obtained a warrant of attachment against the property here of Banque de France and levied upon the accounts and property of the Banque de France held by Federal Reserve Bank in New York. After a summons was served by publication upon Banque de France, it appeared specially in order to challenge the jurisdiction of the courts of the State of New York in the action which the assignees of Banque National de Belgique seek to maintain in this state. Its challenge was rejected in the Supreme Court and the order was affirmed by the Appellate Division, which denied leave to appeal to this court. After Banque de France had thus unsuccessfully sought by every available means to induce the court in which the action was brought to refuse to exercise jurisdiction and to dismiss the complaint, it applied to the Appellate Division, pursuant to the provisions of article 78 of the Civil Practice Act, for an order prohibiting and restraining the Supreme Court or any justice of the court from entertaining or exercising jurisdiction of the action.

The Appellate Division, upon motion of the respondents, dismissed the petition of Banque de France "as matter of law and not in the exercise of discretion". The petitioner seeks an extraordinary remedy to halt threatened action by a court or judge which the petitioner contends would be a usurpation of power. The General Corporation Law (Cons. Laws, ch. 23) provides that "an action against a foreign corporation may be maintained by a resident of the state, or by a domestic corporation, for any cause of action." (Sec. 224.) Transitory causes of action arising outside of the state are within the general jurisdiction of the courts of the state when brought by a resident of the state even though the defendant be a foreign corporation and the plaintiff be the assignee of a person not himself a resident of the state. There are nevertheless limitations upon the general jurisdiction of the courts of this state imposed by the Constitution of the United States.

A state may not encroach upon the field where the power of the federal government is exclusive and "the general jurisdiction of the courts of a state is confined to the field from which the state itself is not excluded." (*Matter of Baltimore Mail S. S. Co. v. Fawcett*, 269 N. Y. 379, 385.) In that case this court held that in circumstances where compulsion by a state upon a foreign corporation, engaged in foreign or interstate commerce, to submit a suit in its courts upon a transitory cause of action arising in a different jursdiction would constitute an unreasonable burden and an obstruction of commerce forbidden by the Constitution of the United States, the carrier may be entitled to an order prohibiting the State court from attempting to exercise jurisdiction of the suit. The Banque de France asserts that on that ground it is entitled to such an order for the necessary protection of its constitutional rights.

In all the cases where it has been held that such compulsion is beyond the power of a state and a violation of rights or immunities guaranteed by the Constitution, the foreign corporation has been engaged in commerce as a carrier. The Banque de France asserts that the principle applies wherever such compulsion casts an unreasonable burden upon a foreign corporation engaged in foreign or interstate commerce in any form and is not confined to obstruction of transportation of passengers or goods. Doubtless the power of the Congress of the United States "to regulate Commerce with foreign Nations, and among the several States" (U. S. Const., art. I, sec. 8, cl. 3) extends to foreign and interstate commerce of every kind and is not confined to transportation. Though a foreign corporation engaged in foreign or interstate commerce as carrier or otherwise is not "immune from the ordinary process of the courts of a State," yet no state may intrude upon the field assigned by the Constitution to the federal government. At least in theory, state laws which unreasonably obstruct and unduly burden interstate commerce in any form may violate the commerce clause of the Constitution. (*Davis v. Farmers Cooperative Equity Co.*, 262 U. S. 312, 316.) The principle upon which the petitioner relies is general; yet when that principle is invoked to support the contention

that in a particular case a law of the State of New York is obnoxious to the commerce clause of the Constitution, then the nature of the function which the foreign corporation performs in foreign or interstate commerce may be the decisive factor in applying the test whether the assertion of jurisdiction casts "a serious and unreasonable burden" upon the corporation, a burden which unduly obstructs interstate commerce. It is significant that no case can be found where the general principle has led to the conclusion that the assertion of plenary jurisdiction by a state court in any transitory action against a foreign corporation is obnoxious to the commerce clause where such a foreign corporation has not been engaged in the business of a carrier. In every case beginning with *Davis v. Farmers Cooperative Equity Co. (supra)*, the court has based its decision upon the effect which compulsion upon a carrier to submit to suit upon causes of action arising in other states would have upon the business of a carrier in view of the nature of that business. (See *Matter of Baltimore Mail S. S. Co. v. Fawcett, supra,* and especially *International Milling Co. v. Columbia Transportation Co.,* 292 U. S. 511, and cases there cited.) The contention of the Banque de France finds little support in those cases.

We assume that Banque de France, *the central bank of issue* of France, does business and exercises functions connected with commerce with the United States and which tend to promote such commerce. Even upon that assumption the question here presented is not, as the petitioner contends, "Are the principles of immunity under the Commerce Clause which are applied in the decision of this Court in the case of *Baltimore Mail S. S. Co.* v. *Fawcett,* 269 N. Y. 389, and in the decisions of the United States Supreme Court therein followed, applicable only in favor of corporate common carriers, or do they extend equally to all other foreign corporations engaged in interstate or foreign commerce?" The question which must be decided upon this appeal is whether under the principles of immunity under the commerce clause (U. S. Const. art. I, sec. 8), applied in the case of *Matter of Baltimore S. S. Co.* v. *Fawcett* (*supra*), the exercise of jurisdiction by the Supreme Court

of the state in *this* suit which *these* plaintiffs have attempted to bring against *this* defendant in accordance with the laws of this state, is obnoxious to the commerce clause.

The test which dictates a negative answer in this case has been authoritatively stated by the Supreme Court of the United States. "Even a foreign corporation is not immune from the ordinary processes of the courts of a State where its business is entirely interstate in character. *International Harvester Co.* v. *Kentucky*, 234 U. S. 579. It must submit, if there is jurisdiction, to the requirements of orderly, effective administration of justice, although thereby interstate commerce is incidentally burdened." (*Hoffman* v. *Foraker*, 274 U. S. 21, 23.) In the cases upon which the petitioners rely the courts gave weight to the disruption in the performance by interstate carriers of their function of transportation which might follow from the application and enforcement of the law of a state which would compel foreign corporations to submit to suit there in a case where the foreign corporation is an interstate carrier engaged in business in that state only incidentally connected with its business as a carrier in other states, where the cause of action arose outside of the jurisdiction in favor of a person not then a resident of the state and where "the suit might more conveniently be litigated in another forum available equally to both parties." (Cf. *B. & O. R. R.* v. *Kepner*, 314 U. S. 44, decided by the Supreme Court of the United States November 10, 1941.)

In this case the opposing considerations to be weighed are quite different. Banque de France customarily maintains here large balances which it uses in the course of its business. It has sent here gold of the value of hundreds of millions of dollars. It alleges that the accounts here upon which the plaintiff has levied are worth over seven hundred million dollars. If we sustain its contention that its property here is immune from process of the courts of this state in an action brought here by persons claiming to be assignees of the foreign owner of a cause of action for conversion of gold in France or for breach of contract made in either France or Belgium, these plaintiffs, though residents of this state, must resort to the courts in Belgium or

in Paris, jurisdictions occupied by Germany, a power with which this country is at war, or at best to the courts in unoccupied France, a country which accepts as law the decrees of the group of men who claim under the aegis of Germany to be authorized to act as the government of Belgium, though the United States recognizes as the only legitimate government of Belgium the group of exiles who are exercising in a country not subject to the domination of Belgium's conquerors governmental power entrusted to them by the laws of Belgium. To relegate the plaintiffs, though residents of New York, to the courts of a country which refused to recognize the government of Belgium or to enforce decrees upon which the title of the plaintiffs depends is, in effect, to deny to them any right to litigate in any tribunal their rights under the laws of Belgium as promulgated by its legitimate government.

Nothing that we have said should be construed as indicating that in our opinion the plaintiffs' assignment is valid in fact or in law or that the plaintiffs are entitled to recover if they prove all the allegations of the complaint. These are matters which must be determined by the court in which the action is brought and which we may not consider upon this appeal. We decide only that the defendant is not immune from suit in the courts of this state; and that the assertion of jurisdiction in this case by the courts of this state tends to promote "orderly, effective administration of justice" and casts no undue burden upon the performance by the defendant of any function in interstate commerce which may be incidental to its banking business.

The order should be affirmed, with costs.

Loughran, Finch, Rippey, Lewis, Conway and Desmond, JJ. concur.

Order affirmed.